

## **Detailed Action**

### ***Amendment***

1. This office action is in response to applicant's amendment dated 9-28-09 and this action is a final rejection.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 77-84 and 92 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The limitations of the lens being entirely encircled or encircled by the switch as seen in claims 77 and 92 are not described in applicant's specification. As seen in page 6 lines 25-27 of applicant's specification and as seen in applicant's drawing figures the lens – at 101 is described as being contained in the switch – at 108, but is not described or shown as being encircled or entirely encircled by item - 108 in that the lens - at 101 appears to be held in place by items 102 of the switch - at 108.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 78 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to whether the lens in line 4 of claim 78 is the same lens or a different second lens than that described in line 13 of parent claim 77.

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 77, 80-82, 84 and 92 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,854,859 to Cooper et al. in view of U.S. Patent No. 6,260,302 to Blaschke and further in view of U.S. Patent No. 5,428,484 to Baker and further in view of U.S. Patent No. 6,789,972 to Nadel.

Referring to claims 77 and 92, Cooper et al. discloses an illumination device including a telescoping handle – see at 66,67,70, a foldable frame – at 200-210, comprising, the handle being formed by a plurality of telescoping sections – see at 66,67,70, a tool adjacent section – at 68-75,168,172, having a distal end facing the tool – at 202 – see figures 9,10, the frame being secured to the tool adjacent telescoping section – see figures 9-10, and submersible LED

illuminator – at 168,172, for illuminating the tool – at 202 – see figures 9-10, all of the illuminator being disposed in the distal end of the tool adjacent section – see at 168,172 in figures 9-10, and remote from the opposite end of the handle – see figures 8-10, the illuminator including, a light body – at 172, secured to the distal end of the tool adjacent section – see figures 9-10, the light body having a tool facing section and a single inner recess – see figures 8-10, at least one light emitting diode secured within the inner recess – see figures 8-10, at least one battery secured within the inner recess for electric power to the LED – see figures 8-10, and a switch – at 18, rotatably and water-tightly secured to the light body – see figures 8-10, for on/off switching of electric power to the LED – see figures 1-10 and column 4 lines 19-24, and a lens – at the casing portion of the LED – at 74,172 as seen in figures 8-10. Cooper et al. does not disclose the working tool is a net. Blaschke does disclose a submersible lighted tool having a foldable frame – at 12, having a net on the frame – see at 14,15 in figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. and add the foldable frame and net of Blaschke, so as to allow for the device to be used for retrieving objects during use. Cooper et al. as modified by Blaschke does not disclose the switch having an LED-light passage portion therethrough and the switch is a single-piece annular switch entirely encircling a lens. Baker does disclose the switch – at 42, has a light passage portion therethrough - see at 42 in figures 1-2 and column 2 lines 11-22, and the switch – at 42, is a single-piece annular switch – see figures 1-2 encircling a lens – see figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke and add the switch with light passage portion therethrough of Baker, so as to allow for light to be directed from one end of the device during use. Cooper et al. further does not disclose

the LED and battery are entirely disposed within the single inner recess of the light body. Nadel does disclose the LED - at 26, and battery - at 30 are both entirely disposed within the single inner recess - at 12 of the light body - see figure 1. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. and add the LED and battery entirely disposed in the single inner recess of Nadel, so as to allow for the LED and battery to be protected from any outside elements.

Referring to claim 80, Cooper et al. as modified by Blaschke, Baker and Nadel further discloses the frame has at least one surface - at 208 and/or 202, facing the LED and having a reflective portion - at 202 - see figures 9-10 of Cooper et al.

Referring to claim 81, Cooper et al. as modified by Blaschke and Baker further discloses the reflective portion is a reflective coating - see at 202 of Cooper et al.

Referring to claim 82, Cooper et al. as modified by Blaschke, Baker and Nadel does not disclose the reflective portion is one of reflective tape and reflective coating containing fluorescent pigment. However, applicant does not state that using reflective tape or coating with fluorescent pigment is critical to the operation of the invention in view of other types of reflective materials. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke and add the reflective tape or coating having fluorescent pigment, so as to allow for the device to be more visible to the user.

Referring to claim 84, Cooper et al. as modified by Blaschke, Baker and Nadel further discloses the light body - at 172, is further adapted for focusing a light beam from the illuminator on the reflective portion - at 202 - see figures 8-10.

Claims 78 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. as modified by Blaschke, Baker and Nadel as applied to claim 77 above, and further in view of U.S. Patent No. 5,647,623 to Shiao.

Referring to claim 78, Cooper et al. as modified by Blaschke, Baker and Nadel further discloses the switch is a rotary switch and end rotatably attached to the net-facing end of the light body and having a light passage portion therethrough – see at 14,16,42 in figures 1-2 of Baker. Cooper et al. as modified by Blaschke, Baker and Nadel does not disclose the switch has a first end engaging a lens. Shiao does disclose the switch is a switch lens cap – at 10,22,40, having a first end engaging a lens – at 40,50 – see figures 1-2. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke, Baker and Nadel and add the rotary switch lens cap of Shiao, so as to allow for the device to be easily controlled by the user.

Claim 79 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao as applied to claim 78 above, and further in view of U.S. Patent No. 6,305,818 to Lebens et al.

Referring to claim 79, Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao further discloses the LED illuminator is adapted for changing the light brightness level by rotating the rotary switch, the illuminator further including a plurality of switch positions – see at 10,22,40 in figure 2 of Shiao and - at 14,16,42 of Baker, corresponding to a plurality of brightness levels accessed by rotating the rotary switch lens – see figure 2 and column 4 lines 17-48 of Shiao and figures 1-2 of Baker. Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao does not disclose an illumination level control adapting the LED to the plurality of

brightness levels corresponding to the plurality of switch positions. Lebens et al. does disclose an illumination level control adapting the LED to the plurality of brightness levels corresponding to the plurality of switch positions - see for example figures 1-3. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke, Baker, Nadel and Shiao and add the illumination control of Lebens et al., so as to allow for the intensity of light produced by the device to be controlled.

Claim 83 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cooper et al. as modified by Blaschke, Baker and Nadel as applied to claim 82 above, and further in view of U.S. Patent No. 5,442,875 to Brundage et al. Cooper et al. as modified by Blaschke, Baker and Nadel does not disclose the surface of the frame includes an optical filter for filtering light emitted by the frame. Brundage et al. does disclose the frame - at 12, includes an optical filter for filtering light emitted by the frame - at the outer surface of 12 - see column 4 lines 38-49 and column 6 lines 17-26. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Cooper et al. as modified by Blaschke, Baker and Nadel and add the optical filter of Brundage et al., so as to allow for light transmitted through the device to be controlled.

### ***Response to Arguments***

5. Applicant's amendment dated 9-28-09 obviates the 35 U.S.C. 112 1<sup>st</sup> paragraph rejections set forth in the last office action dated 5-26-09.

Regarding the prior art rejections of claims 77-84 and 92, the Cooper et al. reference US 6854859 discloses a switch - at 18 rotatably and water-tightly connected indirectly to the light body - at 172 as seen in figures 1-9. Further, the Baker reference US 5428484 discloses the

switch – at 42, is a single-piece annular switch – see figures 1-2 encircling a lens – see figures 1-2.

Further, the following amendment to claim 77 may receive favorable consideration, adding the limitations of the light body having a second end opposing the net facing end, the single inner recess being disposed between the second end of the light body and the net facing end of the light body, the switch having a first end directly, removably and rotatably secured to net facing end of the light body, and the switch having a second end directly secured to the lens with the lens being contained in the switch, and adding all of the limitations of claim 79 into claim 77 and further amending the limitations of claim 79 to include a plurality of switch positions corresponding to a plurality of brightness levels when the LED illuminator is illuminated. This amendment would require the cancellation of claims 78-79 and a further search and/or consideration would be required to determine the patentability of this proposed amendment.

### ***Conclusion***

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to DAVID J. PARSLEY whose telephone number is (571)272-6890. The examiner can normally be reached on Monday-Friday from 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J Parsley/  
Primary Examiner, Art Unit 3643